

**From:** [Niemi, Cheryl \(ECY\)](#)  
**To:** [Szelag.Matthew@epamail.epa.gov](mailto:Szelag.Matthew@epamail.epa.gov)  
**Subject:** RE: human health fishing use  
**Date:** Tuesday, March 22, 2011 11:51:49 AM

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Thanks Matt.

I was getting my natural conditions determinations and my UAA concerns confused in the e-mail I sent you below. The attachments you sent were very helpful. Also nice to find out what happened in AK!

Bottom line:

We can't use natural conditions to claim a human health use is being met - we have to compare the human health use to the criteria developed to fully protect that use. If the natural conditions do not meet the criteria developed to fully protect the human health use, we can use 40CFR131.10(g)(1) to downgrade the human health use to the highest attainable use.

Sorry you couldn't hear the presentation on Thursday. Not many people attended - we will wait to see what response we get. Here we are trying to get some attorney resolution on the "CWA/not CWA" question with regard to putting a fish consumption rate in the sediment management standards. Spoke briefly with Jannine on Monday morning and let her know that we are likely to come to you folks sooner rather than later to get your advice on whether it is CWA or not. Discussion at a meeting here on Monday coalesced around us getting our own in-house finding and something from you by the end of April. So - please start thinking about it! When the request comes to you I will try to make sure we put in as much detail as possible to make your review easier.

Thanks,

Cheryl

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-----Original Message-----

From: [Szelag.Matthew@epamail.epa.gov](mailto:Szelag.Matthew@epamail.epa.gov) [<mailto:Szelag.Matthew@epamail.epa.gov>]  
Sent: Thursday, March 17, 2011 2:12 PM  
To: Niemi, Cheryl (ECY)  
Subject: Re: human health fishing use

Hi Cheryl,  
Below is some further information regarding EPA's position on natural conditions and human health.

EPA states this position in the following policy memo, which we commonly refer to as the Tudor Davies memo.  
(See attached file: naturalback.pdf)

We also relied upon this rationale in our disapproval of Alaska's natural conditions provision. I've also attached that document for you to look at.  
(See attached file: AK Natural Condition Disapprove-Approve Basis  
10-22-2009.pdf)

We also discuss it on page 10 of this document - Principles to Consider When Reviewing and Using Natural Condition Provisions  
[http://yosemite.epa.gov/r10/water.NSF/840a5de5d0a8d1418825650f00715a27/35a31c9aefba540188256fd60076c840/\\$FILE/natural%20condition%20principles%204-1-05.pdf](http://yosemite.epa.gov/r10/water.NSF/840a5de5d0a8d1418825650f00715a27/35a31c9aefba540188256fd60076c840/$FILE/natural%20condition%20principles%204-1-05.pdf)

Hope this helps, feel free to follow up with any questions you may have.  
Thanks,

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From: "Niemi, Cheryl (ECY)" <[cnie461@ECY.WA.GOV](mailto:cnie461@ECY.WA.GOV)>  
To: Matthew Szelag/R10/USEPA/US@EPA  
Date: 03/17/2011 11:54 AM  
Subject: human health fishing use

Hi Matt -

I am perusing Debra's revised report (  
<http://www.deq.state.or.us/wq/rulemaking/standards/2011/arsenic/ArsenicIssuePaper.pdf>  
)

for Oregon arsenic criteria and see the paragraph below on page 5 of the draft report :

“While DEQ’s standards contain a “natural condition” provision, EPA has stated that this type of provision should not apply to human health criteria. The criteria need to protect the uses, which are fishing, fish consumption, and domestic water supply. For aquatic life, natural conditions are reasoned to support native aquatic species which have acclimated or adapted to the natural conditions. This same reasoning does not necessarily hold true for humans at the risk levels and life span targeted for human health protection. Therefore, if DEQ proposes to set human health criteria based on natural background levels, DEQ must demonstrate that those levels are protective of human health.”

I bolded the text I am interested in. Is this somewhere in EPA policy, or is it resulting from talks between Reg 10 and Oregon? I ask because I don't see anything in the federal regs on UAA to preclude a downgrade of a human health harvest use (for instance going from a use defined by a 10-6 risk level to a use defined by a 10-3 level) if that is the natural condition of the water body for a certain chemical. In fact – I think it would work for human-caused sources of pollution too, if they meet the conditions for use changes.

Any info on this?

Thanks.

Cheryl

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